



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

TO: Members of the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing

FR: J.B. Van Hollen, Attorney General *J.B. Van Hollen*

DT: February 18, 2010

RE: 2009 Senate Bill 341

Dear Members of the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing:

Please accept the attached written testimony in support of Senate Bill 341 related to reckless bodily harm to a child and providing a penalty. This written testimony was also delivered to the Assembly Committee on Criminal Justice when a public hearing was held on the companion bill, Assembly Bill 515, on November 12, 2009.

Thank you.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

TO: The Honorable Members of the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing

DT: February 18, 2010

FR: Attorney General J.B. Van Hollen

RE: Support of 2009 Senate Bill 341

Over the past year and a half, many of you on this committee have hosted and participated in one or more of my county law enforcement roundtables. The purpose of those roundtables was to hear from local leaders about the public safety and criminal justice issues affecting their community and to discuss how we in state government might be able to help better assist them in our mutual mission to increase public safety and improve our justice system.

Some of the items discussed called out for changes to our state law.

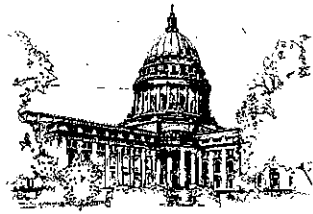
In August 2008, I attended a law enforcement roundtable in Shell Lake hosted by Representative Mary Hubler and Senator Bob Jauch. At that meeting, Washburn County District Attorney J. Michael Bitney and Sheriff Terry Dryden brought up a case involving great bodily harm to a child that I was familiar with because the Department of Justice – Division of Criminal Investigation helped investigate. I understand that others will appear in person to testify about the case, so I will not duplicate their testimony. I will just address the legal problem that complicated the District Attorney's charging analysis: under existing law, the statute specifically criminalizing reckless conduct causing great bodily harm to a child provides for *less* of a penalty than the statute that generally criminalizes reckless conduct causing great bodily harm to others. Under Wis. Stat. § 948.03(3)(a), whoever recklessly causes great bodily harm to a child is guilty of a Class G felony; whereas, under existing Wis. Stat. § 940.23(2), whoever recklessly causes great bodily harm to another human being is guilty of a Class F felony.

This is backwards. Those who cause recklessly cause great bodily injury to children should face a *greater* penalty. Kids are more vulnerable than most adults and are much less likely to be able to avoid injury caused by another person's reckless behavior. More than other people, kids must rely on adults for their safety. When adults breach that responsibility and cause great bodily injury to a child, it is an even greater failing than reckless behavior putting others at risk. This is reason to increase penalties on reckless conduct causing great bodily injury to a child – to punish and to deter this conduct; ultimately, to better protect Wisconsin's children.

After attending the Washburn County roundtable, my staff worked with Senator Jauch and Representative Hubler to draft a simple bill to correct this problem. Senate Bill 341 is the product of that work that started with the law enforcement roundtable and that I hope will culminate with the passing of a new law. The bill increases the penalty for recklessly causing great bodily harm to a child to a Class E felony – one class above the general reckless injury statute and two classes above current law criminalizing reckless conduct causing great bodily injury to a child.

I support this bill and respectfully urge members to do the same.

Thank you.



Mary Hubler

State Representative

Hubler Testimony on Senate Bill 341

Reckless bodily harm to a child

**Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing**

February 18, 2010

Thank you Senator Taylor and committee members for receiving my testimony on Senate Bill 341. I am the lead Assembly author and author of companion bill AB 515. The Assembly version of the bill was passed on Tuesday by a voice vote. It was approved unanimously by the Assembly Committee on Criminal Justice in January.

This bill was prompted by a terrible crime, as are so many bills that increase criminal penalties. In this case, a two-year-old girl was shaken by her mother's fiancée, causing severe brain injuries and other trauma that will afflict her for the rest of her life.

It is a terrible story. Causing that kind of damage to a helpless child is an unforgivable outrage, and I admit that I am among those who have to fight back a desire for revenge.

But I am wary of bills that are proposed in reaction to specific, heinous and notorious crimes. The best laws do not always emerge from strong emotion and anger.

This case and this proposed law are different, however. Even though I remain outraged at the senseless injury to little Emmaline Manning, SB 341 does more than provide an emotional outlet; it corrects an obvious defect in the sentencing structure.

Here to testify today is Washburn County District Attorney J. Michael Bitney. District Attorney Bitney prosecuted this awful case. After his successful prosecution he brought to my attention and to the attention of Senator Robert Jauch that the available penalties for recklessly causing great bodily harm to a child were not as severe as those for committing the same crime with an adult victim.

That makes no sense at all. Causing profound lifelong injury to a helpless toddler ought to be penalized at least as severely as injuring an adult. In fact, the penalty for hurting a child ought to

be more severe given the vulnerability of children and the inexcusable nature of violent crimes against them.

Under the current statute, 948.03(3)(a) a person who is convicted of causing great bodily harm to a child is guilty of a Class G felony and is subject to a fine of not more than \$25,000 or up to ten years imprisonment or both. This bill makes this offense a Class E felony and changes the penalty to a fine of not more than \$50,000 or up to 15 years imprisonment or both.

The same offense with an adult victim is a Class F Felony, which carries a fine not to exceed \$25,000 or imprisonment not to exceed 12 and a half years, or both.

Recklessly causing great bodily harm to a child is a serious crime and the available penalties ought to reflect that. There is no reason that hurting a child should be punished less severely than injuring an adult. In the above case, the potential of a lifetime has been diminished by a wanton act of violence.

The perpetrator of this crime will eventually regain his freedom, even under the harsher penalty I propose. The victim has lost forever something that is beyond price.

I hope that you will accept my bill as a proposal that transcends the desire to exact revenge or even the score, because the score can never be evened and real justice can't be achieved. There is no appropriate penalty, and all we can do is make the remedies we have stronger while acknowledging that to injure a child should be at least as serious an offense as to injure an adult.

Thank you.



February 18, 2010

Contact: Sen. Bob Jauch
608-266-3510

Senate Bill 341

Emma's Law

Increasing the Penalty for a Person Convicted of Recklessly Causing Great Bodily Harm to a Child

We were contacted by Washburn County Sheriff Terry Dryden after a high profile case led Washburn County District Attorney and the Sheriff to realize that charging an individual for recklessly causing great bodily harm to an adult carried a higher penalty than recklessly causing great bodily harm to a child.

On August 1, 2007 a two year old girl named Emma was taken to the hospital in Spooner with a severe brain injury. Due to the severity of the injury, the child was flown to a Minneapolis hospital. It was later learned that the mother's fiancé, Michael Stoner, had caused the life threatening injury. That was also the day the I-35 Minnesota bridge collapsed. Stoner and the girl's mother were caught on the bridge as it collapsed while they were rushing to be by her side. They survived after swimming from their vehicle to safety.

When Sheriff Dryden and District Attorney J. Michael Bittney were faced with charging decisions, they were concerned about the discrepancy in the law and contacted our legislative offices. This bill makes a simple modification to current law so that when a child is abused the penalty is no longer less than the penalty associated with harming an adult. We are calling it "Emma's Law" to honor this little girl and recognize the case that has led to the legislation in front of you today.

This is a common sense modification that increases the level of felony from a Class G to a Class E felony, which increases the potential maximum fine from \$25,000 to \$50,000 and increases potential imprisonment from ten years to fifteen years. The bill creates a penalty structure consistent with our values. Although harming a child and harming an adult are both very serious situations, we can agree that harming a child is NOT less serious, which is what our current law indicates.

I join Representative Hubler in encouraging your support.